

the mortgage transaction or the purchase of the mortgaged property.

(d) The provisions of § 203.28 requiring economic soundness shall not be applicable to mortgages covering property located in Alaska, in Guam, in Hawaii, or in the Virgin Islands, but the Commissioner shall find that the property or project is an acceptable risk, giving consideration to the acute housing shortage in Alaska, Guam, Hawaii, or the Virgin Islands.

(Approved by the Office of Management and Budget under control number 2502-0302)

[36 FR 24508, Dec. 22, 1971, as amended at 49 FR 14338, Apr. 11, 1984; 55 FR 34804, Aug. 24, 1990; 56 FR 18948, Apr. 24, 1991; 64 FR 14569, Mar. 25, 1999]

#### **§ 203.30 Certificate of nondiscrimination by the mortgagor.**

The mortgagor shall certify to the Commissioner as to each of the following points:

(a) That neither he, nor anyone authorized to act for him, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by the mortgage to any person because of race, color, religion, national origin, familial status (except as provided by law), or handicap.

(b) That any restrictive covenant on such property relating to race, color, religion, or national origin is recognized as being illegal and void and is hereby specifically disclaimed.

(c) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

(d) That buildings having four (4) or more units, which were built for first occupancy after March 13, 1991, were constructed in compliance with the Fair Housing Act new construction requirements in 24 CFR 100.205.

[36 FR 24508, Dec. 22, 1971, as amended at 57 FR 58347, Dec. 9, 1992; 61 FR 36264, July 9, 1996]

#### **§ 203.31 Mortgagor of a principal residence in military service cases.**

(a) A mortgage that is otherwise eligible for insurance under any of the provisions of this part may be insured without regard to any requirement contained in this part that the mortgagor occupy the dwelling as a principal residence (as defined in § 203.18(f)(1)) at the time of insurance, or that the mortgagor meet loan-to-value or comparable limitations based on the failure of the mortgagor to meet an occupancy requirement, if:

(1) The Commissioner is satisfied that the inability of the mortgagor to meet the occupancy requirement is by reason of his or her entry into military service after the filing of an application for insurance; and

(2) The mortgagor expresses an intent (in such form as the Commissioner may prescribe), to meet the occupancy requirement upon his or her discharge from the service.

(b) A serviceperson will also be considered to meet the occupancy requirement referred to in paragraph (a) of this section for mortgage insurance purposes, if the following conditions are satisfied:

(1) The serviceperson and his or her family expect to meet the occupancy requirement referred to in paragraph (a) of this section for two or more years. The Commissioner may shorten this period to one year, if (i) the serviceperson's family will occupy the property for at least one year and (ii) the serviceperson is assigned to a combat zone or other hazardous duty area where the family cannot accompany him or her; and

(2) The property is located in an area in which the prospects of resale are reasonable.

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[55 FR 34804, Aug. 24, 1990]

#### **ELIGIBLE MORTGAGORS**

#### **§ 203.32 Mortgage lien.**

(a) Except as otherwise provided in this section, a mortgagor must establish that, after the mortgage offered for insurance has been recorded, the mortgaged property will be free and

clear of all liens other than such mortgage, and that there will not be outstanding any other unpaid obligations contracted in connection with the mortgage transaction or the purchase of the mortgaged property, except obligations that are secured by property or collateral owned by the mortgagor independently of the mortgaged property.

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an entity designated in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity for People Everywhere (HOPE) program, or an eligible nonprofit organization as defined in § 203.41(a)(5) of this part, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a mortgagee not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

(1) The required monthly payments under the insured mortgage and the second mortgage shall not exceed the mortgagor's reasonable ability to pay, as determined by the Commissioner;

(2) Periodic payments, if any, shall be collected monthly and be substantially the same;

(3) The sum of the principal amount of the insured mortgage and the second mortgage shall not exceed the loan-to-value limitation applicable to the insured mortgage, and shall not exceed the maximum mortgage limit for the area;

(4) The repayment terms shall not provide for a balloon payment before ten years, or for such other term as the Commissioner may approve, except that the mortgage may become due and

payable on sale or refinancing of the secured property covered by the insured mortgage; and

(5) The mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment.

(d)(1) With the prior approval of the Commissioner, the mortgaged property may be subject to a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured, if the junior mortgage meets the following requirements:

(i) The junior mortgage shall not provide for any payment of principal or interest until the property securing the junior mortgage is sold or the insured mortgage is refinanced, at which time the junior mortgage shall become due and payable;

(ii) The total amount of repayments under the junior mortgage shall not exceed the least of:

(A) One-half of the mortgagor's equity interest in the property at the time of sale or refinancing;

(B) Three times the amount of funds advanced to effect the interest rate buy-down; or

(C) The sum of the original loan amount plus the total accrued interest on the junior mortgage at the time of repayment; and

(iii) The junior mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part at any time, and shall not provide for the payment of any charge on account of such prepayment. Any full or partial prepayment will not be recoverable by the mortgagor if, by application of paragraph (d)(1)(ii) on sale or refinancing of the property, a lesser amount than the amount prepaid would have been due.

(2) The sum of the principal amount of the insured mortgage, any second mortgage made under paragraph (b) or (c) of this section, and the mortgage securing the repayment of funds advanced to reduce the borrower's monthly payments (whether a second or third mortgage) may exceed the loan-to-value limitation applicable to

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the insured mortgage, but such sum may not exceed the maximum mortgage limit for the area.

[45 FR 19223, Mar. 25, 1980, as amended at 50 FR 20906, May 21, 1985; 56 FR 4477, Feb. 4, 1991; 58 FR 42647, Aug. 11, 1993]

### § 203.33 Relationship of income to mortgage payments.

(a) Adequacy of mortgagor's gross income. A mortgagor must establish, to the satisfaction of the Secretary, that his or her gross income is and will be adequate to meet (1) the periodic payments required by the mortgage submitted for insurance and (2) other long-term obligations.

(b) Determinations of adequacy of mortgagor income under this section shall be made in a uniform manner without regard to race, color, religion, sex, national origin, familial status, handicap, marital status, source of income of the mortgagor or location of the property.

[37 FR 16390, Aug. 12, 1972, as amended at 54 FR 38649, Sept. 20, 1989; 59 FR 59648, Nov. 18, 1994]

### § 203.34 Credit standing.

A mortgagor must have a general credit standing satisfactory to the Commissioner.

### § 203.35 Disclosure and verification of Social Security and Employer Identification Numbers.

To be eligible for mortgage insurance under this part, the mortgagor must meet the requirements for the disclosure and verification of Social Security and Employer Identification Numbers, as provided by part 200, subpart U, of this chapter.

(Approved by the Office of Management and Budget under control numbers 2502-0059, 2502-0159, and 2502-0268)

[54 FR 39693, Sept. 27, 1989]

### § 203.36 [Reserved]

#### ELIGIBLE PROPERTIES

### § 203.37 Nature of title to realty.

A mortgage, to be eligible for insurance, must be on real estate held in fee simple, or on leasehold under a lease for not less than 99 years which is renewable, or under a lease having a pe-

riod of not less than 10 years to run beyond the maturity date of the mortgage.

[49 FR 21319, May 21, 1984]

### § 203.38 Location of dwelling.

At the time a mortgage is insured there must be located on the mortgaged property one or more dwellings designed principally for residential use for not more than four families.

[61 FR 36264, July 9, 1996]

### § 203.39 Standards for buildings.

The buildings on the mortgaged property must conform with the standards prescribed by the Commissioner.

### § 203.40 Location of property.

The mortgaged property shall be located within the United States, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. The mortgaged property, if otherwise acceptable to the Commissioner, may be located in any community where the housing standards meet the requirements of the Commissioner.

[49 FR 12697, Mar. 30, 1984, as amended at 61 FR 36264, July 9, 1996]

### § 203.41 Free assumability; exceptions.

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low-or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable